SAM O. McREYNOLDS

IBLA 85-37 Decided January 31, 1985

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting acquired lands noncompetitive oil and gas lease offer ES-33095.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Filing

BLM may properly reject an acquired lands noncompetitive oil and gas lease offer filed for public domain lands.

APPEARANCES: Sam O. McReynolds, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Sam O. McReynolds has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated August 3, 1984, rejecting his acquired lands noncompetitive oil and gas lease offer ES-33095.

On January 3, 1984, appellant filed an acquired lands noncompetitive oil and gas lease offer for 280 acres of land situated in the SE 1/4 NE 1/4, SW 1/4 SW 1/4, SE 1/4 SW 1/4, and SE 1/4 sec. 36, T. 5 N., R. 26 W., fifth principal meridian, Logan County, Arkansas, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982). Appellant used the acquired lands lease offer form (Form 3110-3 (February 1982)). In its August 1984 decision, BLM rejected appellant's lease offer because the "minerals requested are not acquired minerals."

In his statement of reasons for appeal, appellant contends that he filed his lease offer on the form provided by a BLM employee. He submits a copy of an October 28, 1983, letter from BLM stating that the land involved herein was available for leasing and that the "requested lease forms" were enclosed. Appellant also argues that offers on "obsolete forms" are not subject to rejection. Finally, appellant submits a public domain noncompetitive oil and gas lease offer for the land (received by BLM on August 21, 1984).

[1] It is well established that an acquired lands noncompetitive oil and gas lease offer must be rejected where the land sought to be leased is public domain land, which is subject to leasing only under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). John O. Clay, 28 IBLA 353 (1977); Leroy Gatlin, 4 IBLA 272 (1972); see also Golden Eagle Petroleum, 67 IBLA 112 (1982).

As previously stated, appellant asserts that he filed his lease offer using the lease offer form provided by a BLM employee. However, it is appellant's responsibility to determine the status of the land, including its character as public domain or acquired land, where the status of the land is a matter of public record. 1/ Cf. Renewable Energy, 67 IBLA 304, 315, 89 I.D. 496, 503 (1982) (minerals reserved to United States). Accepting the fact that it appears the BLM employee gave appellant incorrect advice regarding the status of the land, reliance on erroneous or incomplete information provided by BLM employees cannot relieve a person of an obligation imposed by statute, create rights not authorized by law, or relieve a person of consequences imposed by statute for failure to comply with statutory requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 373 (1981). In the absence of a showing of affirmative misconduct by a responsible Federal employee, estoppel will not lie against the Government because of reliance on erroneous or inadequate information. United States v. Ruby, 588 F.2d 697 (9th Cir. 1978); Lynn Keith, supra.

Eastern States Office, BLM, used a form letter for its August 3, 1984, decision rejecting appellant's lease offer. The only box checked in this form decision was the one stating "[t]he minerals requested are not acquired minerals but were applied for as acquired lands on the lease offer form. (43 CFR 3111.1-1(c))." The box denoting that the lands were within an outstanding lease had not been checked. However, the following notation is found on the memorandum transmitting the case file to this Board:

> [X] The records of the conflicting or reference cases identified below are transmitted herewith for use in connection with the appeal:
>
> The status books in the Eastern States Office (ESO) are categorized by Public Domain and Acquired. It is ESO's policy to post mineral applications based on the type of application filed - in this case acquired. Therefore, the applicant was not informed of the existing Public Domain lease, ES-18027, conflicting with the "amended offer".

1/ Appellant also contends that offers on "obsolete" forms are not subject to rejection. Appellant refers to 43 CFR 3111.1-1(f) which provides in relevant part that an offer "filed on a lease form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use." The present case involves neither an obsolete form nor a form not currently in use.

The case file for lease ES-18027 discloses that a 10-year noncompetitive oil and gas lease was issued to Wardell Thomas, effective March 1, 1978, and subsequently assigned to TXO Production Corporation and Apcot-Finadel Joint Venture. 2/ A junior lease offer is properly rejected where the land has been leased to a senior offeror under a proper offer. Charles E. Shaw, 81 IBLA 347 (1984); John F. Brown, 22 IBLA 133 (1975). While this is also sufficient reason for rejecting appellant's lease offer, it does not alter the fact that appellant's lease offer was not on the proper form.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge

2/ This appeal involves only the validity of appellant's acquired lands lease offer. On Nov. 20, 1984, BLM requested that we remand the case so that it might issue a decision rejecting appellant's acquired lands lease offer for the additional reason that the land was already subject to an outstanding lease. It thus appears that the error made in October 1983, by the BLM employee who stated that "the lands * * * have not been filed on" was compounded by a failure to note the existence of an outstanding lease in the August 1984 decision, resulting in appellant's filing, not one, but two applications for lease of land subject to an outstanding oil and gas lease. While we express no opinion with respect to the validity of appellant's subsequent public domain lease offer, which is not in issue in this appeal, the existence of a valid lease at the time of filing of the lease offer is grounds for rejection. When considering the rejection of the public domain lease offer, BLM should consider refunding the filing fee submitted with the second offer.